IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.521 OF 2006(M/S)

1. Akhilesh Chandra Divaidi, S/o late Raj Kumar Divaidi, R/o Chaya Public Inter College, Modinagar, District-Ghaziabad.
2. Padmaidra Dutt, S/o Sri Prameshwari, Dutt, R/o Chaya Public Inter College, Modinagar, District-Ghaziabad.

.....Petitioners.

Versus

1. The Civil Judge (Junior Division), Kotdwar, District-Pauri Garhwal.
2. Sri Kulanand Ghildiyal, S/o late Kaliram Ghildiyal, R/o Village Govind Nagar, Kotdwar, District-Pauri Garhwal.

.....Respondents.

Mr. Vinod Sharma, Advocate for the petitioner.
Learned Standing Counsel for the respondent no.1.

Dated: 09.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Vinod Sharma, Advocate for the petitioner and Standing Counsel for the respondent no.1.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the opposite party no. 1 Civil Judge, Junior Division to permit the revisionist to adduce his evidence before the Court.

Briefly stated, a Civil Suit No. 26 of 2004 has been filed by the respondent no.2 before the Civil Judge Junior Division, Kotdwar. During the proceedings of the case, it appears that the evidence was continuing. However, an application has been filed by the petitioner on 22nd February, 2006 praying for

another date for adducing evidence when the witness is to come in connection with other connected cases.

The application has been rejected on the ground that there is no such provision under Order 17 Rule 1 as the adjournment cannot exceed more than thrice.

I don't find any illegality in the order passed by the Civil Judge so as to interfere under Article 227 of the Constitution of India. However, in the interest of justice, respondent no. 1 shall provide another opportunity to the petitioner for adducing evidence, in case, the petitioner files an application before the Civil Judge for producing the evidence, same shall be considered by the Presiding Officer and the opportunity shall be given to the petitioner accordingly.

Subject to the aforesaid, writ petition being premature and therefore, it cannot be entertained and is dismissed at this stage.

No order as to costs.

Copy of the order to be given three days.

(Rajesh Tandon, J.)

09.05.2006
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